

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**E.K., Appellant**

**and**

**U.S. POSTAL SERVICE, NEW PROVIDENCE  
POST OFFICE, New Providence, NJ, Employer**

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**Docket No. 10-1920  
Issued: August 19, 2011**

*Appearances:*  
*Thomas R. Uliase, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On July 19, 2010 appellant, through her attorney, filed a timely appeal of an April 16, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her consequential injury claim. Pursuant to Federal Employees' Compensation Act (FECA)<sup>1</sup> and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

**ISSUE**

The issue is whether appellant sustained cervical radiculopathy and carpal tunnel syndrome of her right wrist, for which carpal tunnel release surgery was warranted as a consequence of her June 8, 2004 employment injury.

On appeal, appellant's attorney contends that the medical report of the impartial medical examiner is not entitled to special weight because it required clarification regarding whether the claimed conditions and proposed surgery were causally related to the accepted employment injury.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

OWCP accepted that on June 8, 2004 appellant, then a 40-year-old letter carrier, sustained a contusion and synovitis and tenosynovitis of the right elbow as a result of picking up a tray while delivering mail on her route.

In an August 23, 2006 report, Dr. Nicholas P. Diamond, an osteopath, advised that appellant had post-traumatic right elbow contusion, cervical disc syndrome, herniated nucleus pulposus with indentation on the spinal cord at C3-C4 and right and left cervical radiculitis due to her June 8, 2004 employment injury. He concluded that appellant had an 11 percent impairment of the right upper extremity and 18 percent impairment of the left upper extremity based on the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001).

In a December 4, 2006 report, Dr. David Weiss, a Board-certified orthopedic surgeon, advised that appellant had multilevel degenerative osteoarthritis of the cervical spine with mild right neural foraminal stenosis as demonstrated by x-ray.

In a February 4, 2008 report, Dr. J. Elliot Decker, an orthopedic surgeon, advised that following appellant's June 8, 2004 employment injury, she had right carpal tunnel syndrome based on his physical examination and x-ray. On February 7, 2008 Dr. Decker requested that OWCP authorize surgery to treat the diagnosed right hand condition.

On June 26, 2007 Dr. Morley Slutsky, OWCP's medical adviser, reviewed the medical record and found, among other things, that appellant's claim should not be expanded to include degenerative osteoarthritis of the cervical spine with mild right neural foraminal stenosis, and right elbow post-traumatic contusion and sprain. Dr. Slutsky stated that there was no objective evidence that linked the diagnosed cervical conditions to her symptoms and work duties. He further stated that there was no objective evidence of a chronic right elbow condition as symptoms from contusions and sprains of the elbow usually resolved within a few weeks of the date of injury and appellant's treating physicians found that she had good range of motion of the right elbow.

On March 20, 2009 OWCP found a conflict in the medical opinion evidence as to whether appellant's right carpal tunnel syndrome, cervical radiculopathy and the proposed carpal tunnel release surgery were due to her June 8, 2004 employment injury.

By letter dated April 23, 2009, OWCP referred appellant to Dr. Glen P. Wainen, a Board-certified orthopedic surgeon, for an impartial medical examination. In an April 29, 2009 report, Dr. Wainen reviewed a history of the June 8, 2004 employment injury, medical treatment and medical records. He noted appellant's right hand and neck symptoms. On physical examination, Dr. Wainen reported essentially normal findings, noting that she could flex and extend the neck with a little difficulty, her cervical spine was minimally tender to any palpation, she complained about decreased sensation in the entire hand, including the back of the dorsum of the hand, but not in the median nerve distribution and in the forth and fifth fingers, but more so in the dorsal and volar aspect of the hand and fingers.

Dr. Wainen reported that his examination was inconsistent with pure carpal tunnel syndrome. Appellant had no specific median nerve root distribution to her pain. Her pain coincided with the back of the hand more so than the palmar surface. The ulnar nerve distribution was normal on both electromyogram studies. There were negative Tinel's and Phalen's signs on the wrist. There was no atrophy in the hand. Appellant had good motor strength in the thenar eminence. She had some mild cervical pain but, it was minimal. There was no significant radiculopathy. Appellant had good reflexes, motor strength and range of motion in the upper extremities. Dr. Wainen advised that her accepted employment-related condition had reached maximum medical improvement and she had no disability. Appellant's cervical spine condition did not appear to be related to the accepted injury. Dr. Wainen stated that, although an EMG study showed some possible degenerative changes causing cervical radiculopathy, the condition could be treated with cervical epidural injections under appellant's primary medical insurance. He opined that appellant's carpal tunnel syndrome was not related to the June 8, 2004 employment injury, noting that the condition could be related to people who perform lifting and repetitive work. Dr. Wainen advised that his examination was not consistent with carpal tunnel syndrome, despite the fact that she had an EMG study that showed some mild changes. He stated that surgery might be beneficial or it may be an element of a double crush injury since appellant may have some cervical changes. Dr. Wainen concluded that carpal tunnel release was not warranted or indicated at that time. He did not believe it would alleviate the symptoms seen on his examination. Dr. Wainen stated that he would be reluctant to proceed with carpal tunnel release based on a December 17, 2007 EMG study that was performed almost 17 months ago. He advised that further treatment of appellant's cervical condition would require a magnetic resonance imaging (MRI) scan. Dr. Wainen advised that since this condition was not related to her June 8, 2004 employment injury, the diagnostic testing should be performed through her primary medical insurance. He further advised that appellant's decreased sensation in the hand should be worked up with a vascular study through her primary medical insurance due to her history of cold intolerance and diagnostic testing for potential nerve entrapment syndrome. Dr. Wainen stated that her hand functioned well. He saw no skin, muscle or thenar eminence atrophy and no loss of range of motion. The calluses on appellant's hand appeared equal bilaterally as it appeared that she was using them.

In a September 23, 2009 decision, OWCP denied appellant's claim for a consequential right wrist condition and surgery. It found that the weight of the medical opinion evidence rested with Dr. Wainen's April 29, 2009 report.

In an October 5, 2009 letter, appellant, through counsel, requested an oral hearing before OWCP's hearing representative.

In a September 23, 2009 report, Dr. Decker reiterated his diagnosis of right wrist carpal tunnel syndrome. He again requested authorization to perform surgery to treat the diagnosed condition.

In narrative and diagnostic test reports dated October 21, 2009 through January 12, 2010, Dr. Aleya Salam, a Board-certified physiatrist, advised that appellant had cervical pain and spondylosis. In an October 22, 2009 cervical MRI scan report, Dr. William A. Parker, a Board-certified radiologist, advised that appellant had mild degenerative changes with narrowing of the

left C3-C4 neural foramen. In a January 12, 2010 report, Dr. Patrick M. Collalto, a Board-certified orthopedic surgeon, stated that appellant had cervical pain.

In an April 16, 2010 decision, OWCP's hearing representative affirmed the September 23, 2009 decision, finding that Dr. Wainen's report was entitled to special weight accorded an impartial medical specialist and established that appellant did not have consequential employment-related right wrist and cervical injuries and that right carpal tunnel release was not warranted.

### **LEGAL PRECEDENT**

It is an accepted principle of workers' compensation law that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employee's own intentional conduct.<sup>2</sup> Regarding the range of compensable consequences of an employment-related injury, Larson notes that, when the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury, the rules that come into play are essentially based upon the concepts of direct and natural results and of the claimant's own conduct as an independent intervening cause. The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury. Thus, once the work-connected character of any condition is established, the subsequent progression of that condition remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause.<sup>3</sup>

A claimant bears the burden of proof to establish a claim for a consequential injury.<sup>4</sup> As part of this burden, he or she must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship. Rationalized medical evidence is evidence, which relates a work incident or factors of employment to a claimant's condition, with stated reasons of a physician. The opinion must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship of the diagnosed condition and the specific employment factors or employment injury.<sup>5</sup>

If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician (known as a referee physician or impartial medical specialist) who shall make an examination.<sup>6</sup> In cases where OWCP has referred appellant to an impartial medical examiner to resolve a conflict in the

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<sup>2</sup> *Albert F. Ranieri*, 55 ECAB 598 (2004).

<sup>3</sup> A. Larson, *The Law of Workers' Compensation* § 10.01 (November 2000).

<sup>4</sup> *J.J.*, Docket No. 09-27 (issued February 10, 2009).

<sup>5</sup> *Charles W. Downey*, 54 ECAB 421 (2003).

<sup>6</sup> 5 U.S.C. § 8123(a); *see S.T.*, Docket No. 08-1675 (issued May 4, 2009).

medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>7</sup>

### ANALYSIS

Appellant's physicians, Dr. Diamond, Dr. Weiss and Dr. Decker, opined that appellant developed degenerative cervical conditions and right-sided carpal tunnel syndrome that necessitated right carpal tunnel release surgery following the June 8, 2004 employment injury. Dr. Slutsky, OWCP's medical adviser, found that the diagnosed cervical and right wrist conditions were not causally related to the accepted employment injury and advised against authorization for the right carpal tunnel release surgery. OWCP determined that a conflict of medical opinion arose as to whether picking up a tray at work contributed to the cervical and right wrist conditions and need for surgery. It properly referred appellant to Dr. Wainen, a Board-certified orthopedic surgeon, selected as the impartial medical examiner.

The Board finds that the special weight of the medical evidence rests with the opinion of Dr. Wainen. In an April 29, 2009 report, Dr. Wainen examined appellant, reviewed the medical evidence of record and found that appellant did not have carpal tunnel syndrome of the right wrist and cervical radiculopathy causally related to the June 8, 2004 employment injury. He also found that the accepted injury did not contribute to the need for right carpal tunnel release surgery. Dr. Wainen advised that appellant had reached maximum medical improvement with regard to the accepted injury and she had no disability. On physical examination, he reported essentially normal findings, noting that appellant had a little difficulty flexing and extending her neck, her cervical spine was minimally tender to any palpation and she complained about decreased sensation in the entire hand, including the back of the dorsum of the hand, but not in the median nerve distribution and in the fourth and fifth fingers, but more so in the dorsal and volar aspect of the hand and fingers. Dr. Wainen advised that while people who perform lifting and repetitive work can develop carpal tunnel syndrome, his examination findings were inconsistent with pure carpal tunnel syndrome. He explained that appellant had no specific median nerve root distribution to her pain. Dr. Wainen further explained that her pain coincided with the back of the hand more so than the palmar surface. He noted that the ulnar nerve distribution was normal on both EMG studies. Dr. Wainen also noted that the Tinel's and Phalen's signs on the wrist were negative. He found no atrophy in the hand and appellant had good motor strength in the thenar eminence and no loss of range of motion. Dr. Wainen advised that the proposed surgery was not warranted because it may result in a double crush injury since appellant may have some cervical changes. He did not believe the proposed surgery would alleviate the symptoms seen on his examination. Dr. Wainen stated that he would not perform carpal tunnel release based on the December 17, 2007 EMG study as it was almost 17 months old. He found that while an EMG study showed possible degenerative changes causing cervical radiculopathy, such changes were not caused by the accepted employment injury. Dr. Wainen explained that appellant had mild cervical pain that was minimal and no significant radiculopathy. He further explained that she had good reflexes, motor strength and range of motion in the upper extremities.

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<sup>7</sup> *Gloria J. Godfrey*, 52 ECAB 486 (2001); *B.P.*, Docket No. 08-1457 (issued February 2, 2009).

As noted, a reasoned opinion from a referee examiner is entitled to special weight.<sup>8</sup> The Board finds that Dr. Wainen provided a well-rationalized opinion based on a complete background, his review of the accepted facts and the medical record and his examination findings. Dr. Wainen's opinion that appellant did not sustain carpal tunnel syndrome of the right wrist that required carpal tunnel release surgery or cervical radiculopathy causally related to her June 8, 2004 employment injury is entitled to special weight and represents the weight of the evidence.<sup>9</sup>

Dr. Decker's September 23, 2009 report addressed appellant's right carpal tunnel syndrome condition and the need for surgery to treat the diagnosed condition. He did not provide a medical opinion addressing whether the diagnosed condition and proposed surgery were causally related to the June 8, 2004 employment injury.<sup>10</sup> Moreover, Dr. Decker was part of the conflict in medical opinion for which appellant was referred to Dr. Wainen.<sup>11</sup> Therefore, his report is insufficient to overcome or to create a conflict with the well-rationalized medical opinion of Dr. Wainen.<sup>12</sup>

Similarly, the narrative and diagnostic test reports of Dr. Salam, Dr. Parker and Dr. Collalto have limited probative value in that they do not provide a medical opinion addressing whether the diagnosed cervical conditions were causally related to the June 8, 2004 employment injury.<sup>13</sup> The Board finds, therefore, that this evidence is insufficient to outweigh the special weight accorded to Dr. Wainen's impartial medical opinion that appellant's cervical radiculopathy and carpal tunnel syndrome of the right hand and need for right carpal tunnel release are not due to the accepted employment injury or to create a new conflict.

The Board further finds that appellant's contention on appeal, that Dr. Wainen's impartial medical opinion required clarification regarding the causal relationship between her diagnosed cervical and right wrist conditions and the proposed wrist surgery has not been established. As stated, Dr. Wainen provided a well-rationalized opinion regarding causal relation which constitutes the special weight of the medical evidence and establishes that appellant does not have consequential cervical and right wrist injuries and that right wrist surgery is not warranted due to the June 8, 2004 employment injury.

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> The medical opinion to establish a claim must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. *Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005).

<sup>11</sup> *See Jaja K. Asaramo*, 55 ECAB 200 (2004) (submitting a report from a physician who was on one side of a medical conflict that an impartial specialist resolved is generally insufficient to overcome the weight accorded to the report of the impartial medical examiner or to create a new conflict).

<sup>12</sup> *Michael Hughes*, 52 ECAB 387 (2001).

<sup>13</sup> *Elizabeth H. Kramm (Leonard O. Kramm)*, *supra* note 10.

**CONCLUSION**

The Board finds that appellant has failed to establish that she sustained cervical radiculopathy and carpal tunnel syndrome of her right wrist for which carpal tunnel release surgery was warranted as a consequence of her June 8, 2004 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 16, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 19, 2011  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board